IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2555 OF 2006

Rajjanlal Bachhulal Gupta ... Applicant
versus
State of Maharashtra ... Respondent

Mr.Mansaramani for applicant.
Mr.P.A.Pol, APP.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th August 2006

PC :

1. The applicant along with one Sanjay Chopda has been arrested in CR No.1/2006 for the offence punishable under section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

2. The allegation is that the transporter Sanjay Chopda, who owns Truck bearing No.MH-31-AP-3586, came to the weigh bridge of the applicant on 24th May 2006 for the purposes of checking the gross weight of the consignment loaded on the same. On weighing, it was found that the truck was over loaded. The additional load was unloaded at the godown. The load was Railway property weighing

about 2.295 MT.. The allegation is that the goods do not belong to the applicant but are Railway Property. Pursuant to this a crime came to be registered.

3. The case was made over to JMFC, Railways, Manmad.

4. The applicant has been arrested on 19th June 2006 and is in custody.

5. During pendency of this application, I am informed by both sides, that the charge sheet has been filed after investigations were completed. I am also informed that the transporter Shri Chopda who is accused of similar offence, has been enlarged on bail by the Sessions Court.

6. In such circumstances, in addition to merits on grounds of parity, the applicant’s advocate submits that the application be allowed.

7. Shri Pol - learned APP submits that apart from the transporter and the applicant, there are five others who are accused but they are absconding. In such circumstances and when the applicant is dealing in scrap and not is not

owner of the weigh bridge, this is not a case for releasing the applicant on bail.

8. From a reading of the application and the annexures thereto, so also the order of the Sessions Judge rejecting the bail prior to filing of the charge sheet it is apparent that the offences alleged, are only under the Railway Property Act. The learned Judge has been fair enough in observing that the said offence is punishable with imprisonment for a period of five years and in normal case there is no impediment for releasing the applicant on bail. The learned Judge has, however, perused the papers which were placed before him at the stage of investigation and has made observations with regard to the applicant’s role in the offence.

9. In my view, once the investigations are complete, charge sheet is filed and the transporter is enlarged on bail, the circumstances have changed and it would not be proper to deny bail to the Applicant. More so, when the learned Judge has observed that in normal circumstance there is no impediment to grant bail. It is not pointed out to me that the applicant is not residing permanently at Manmad

or that he has no place of business thereat or would be otherwise unavailable during the course of trial. On the other hand, upon taking instructions, the applicant's counsel has made a statement that the applicant permanently resides at Manmad as also has a place of business and would produce all such documents as are necessary to evidence this fact. In my view, merely because prima facie observations regarding the role of the applicant so also his business dealings are made by the Trial Court taking an over all view of the matter and applying settled principles, this is not a case where the applicant can be denied bail.

10. Hence following order :-

(i) The applicant shall be enlarged on bail in connection with C.R.No.1 of 2006 registered with RPF, Manmad, District Nashik in the sum of Rs.25,000/- (Rs.Twenty five thousand only) with one or two sureities in the like sum;

ii) The applicant shall continue to visit the concerned Police Station once in a week till disposal of the case before the JMFC, Railways, Manmad;

iii) Unless documents showing residence proof and business premises proof are submitted by the applicant, the applicant shall not be released;

(iv) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(v) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(vi) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vii) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)